ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK
Chairman
JAMES M. IRVIN
Commissioner
WILLIAM A. MUNDELL
Commissioner

IN THE MATTER OF THE APPLICATION OF U S WEST COMMUNICATIONS, INC. A COLORADO CORPORATION, FOR A HEARING TO DETERMINE THE EARNINGS OF THE COMPANY, THE FAIR VALUE OF THE COMPANY FOR RATEMAKING PURPOSES, TO FIX A JUST AND REASONABLE RATE OF RETURN THEREON AND TO APPROVE RATE SCHEDULES DESIGNED TO DEVELOP SUCH RETURN.	**DOCKET NO. T-01051B-99-0105** **JOINT MOTION OF AT&T AND COX TO RECONSIDER PROCEDURAL SCHEDULE** **(Expedited Ruling Requested)**

AT&T Communications of the Mountain States, Inc. ("AT&T") and Cox Arizona Telcom, L.L.C. ("Cox") hereby move that the Hearing Division reconsider the schedule adopted in the October 17, 2000 Procedural Order for evaluating the Qwest Corporation ("Qwest") rate case settlement proposal.

The Settlement Agreement ("Agreement") proposed by Qwest and the Staff of the Arizona Corporation Commission, which was distributed to parties on October 20, 2000, essentially contains two parts. First, the Agreement adopts and approves a revenue requirement for Qwest of $42.9 million. Second, the Agreement proposes a system whereby Qwest will recover revenue through a rate design known as the Price Cap Plan. AT&T and Cox believe the Commission is ill-served by the current hearing schedule because (1) neither the public nor parties to the case have been provided with an adequate time to review and understand the Agreement; (2) the Price Cap Plan is inconsistent with the Competitive Telecommunications Services Rules; and (3) the revenue requirement in

the proposed Agreement is not supported by the record and will not be the subject of adequate public scrutiny or open debate.

1. THE EXPEDITED SCHEDULE

An expedited schedule is now in place to approve the Agreement drafted by the Utilities Division Staff and Qwest. This Agreement was not the product of negotiations involving all interested parties and has not been the subject of an open and deliberative process. All parties other than Qwest and Commission Staff -- including the Residential Consumer Utility Office -- were excluded from the settlement negotiations.

A public hearing on the Agreement is set to begin November 29, 2000. The scope of that hearing is limited to the contents of the Agreement. Interested parties and the general public have had only a few weeks to review this complicated -- yet vague and ambiguous -- settlement proposal and file responsive testimony. Only limited discovery has been possible due to time constraints. Yet the apparent effects of the Agreement are sweeping. This Agreement will implement a system that moves Arizona away from traditional rate-of-return regulation and toward a system "that relies on direct regulation of prices." See Testimony of Staff witness Harry M. Shooshan III, at 1-2. Regardless of the merits of the new proposal, this is an enormous change of direction for the telecommunications industry in Arizona, a change that should involve the full participation of the Commission Staff, consumer groups, Qwest, new local service providers and the general public. Such a review cannot be accomplished using an expedited schedule that limits discussion to the contents of an Agreement negotiated in private.

The importance of using a fair and open deliberative process in considering the proposed settlement is amplified by the recent general election. Proposition 108, a ballot initiative submitted by U S WEST, was drafted to allow precisely what the Agreement's Price Cap Plan proposes: competitive geographic zones with flexible pricing for local telecommunications services. In the election, eighty percent (80%) of the voters rejected Proposition 108. Given the recently expressed opinion of the Arizona voters, it is clear that Qwest's proposal should be the subject of fair and open deliberations, with sufficient time for all interested parties to understand and comment on what is being proposed. If a reasonable schedule that allows notice and full participation is not ordered, the Commission may be accused of approving by private agreement precisely what the public rejected on November 7, 2000.

The most recent Procedural Order in this case characterizes the Agreement as "an extraordinary event" and suspends indefinitely all rate case time-clock rules generally applicable to Class A public utilities. *See* October 17, 2000 Procedural Order, at 3. This suspension of time clock rules allows the Commission to work with great haste and further compromise full participation and open deliberations. For example, with the rules suspended, parties need not be given 20 days to review and comment on any recommended opinion and order prior to Commission deliberations. *See* A.A.C. R14-2-103(G)(11)(c). The schedule set in this case, and the rush to seek Commission approval, will ultimately undermine any decision of the Commission. A reasonable period for review and deliberation would give any agreement eventually reached increased credibility with the public, add supporters, and minimize legal challenges.

2. THE PRICE CAP PLAN AND COMPETITIVE SERVICES RULES

The Competitive Telecommunications Services Rules, A.A.C. R14-2-1101-1115 (the "Rules"), govern competitive services offered by telecommunications companies in Arizona. Under the Rules, any telecommunications provider, including Qwest, can submit a petition for competitive classification pursuant to A.A.C. R14-2-1108 ("Rule 1108"). The Rules do not anticipate or permit a carrier to offer a competitive service without submitting a petition pursuant to Rule 1108. The petition must include, among other things, information concerning market power, economic conditions, competitors and market share.

The Agreement drafted by Qwest and Staff is not consistent with the Rules. Instead the Agreement fundamentally alters the process for offering new competitive services, at least as applied to Qwest. Gone is the Rule 1108 petition process and in its place is a vague Commission approval requirement (Agreement ¶ 4(e)), that fails to require the competitive market information required by Rule 1108. Under the Agreement, Rule 1108 is effectively modified (without a formal rule-making) to exempt Qwest from requirements applicable to all other competitive carriers.

The Agreement also allows Qwest to offer new services and packages to select customer groups based on their purchasing patterns or geographic location. Once again, Qwest is permitted to introduce a competitive service without complying with Rule 1108. Given the ambiguity of the Agreement -- and Qwest's apparent exemption from the Rules -- Qwest may have more pricing flexibility than CLECs currently enjoy under the Rules. Again, this is troubling for emerging competition. This breach of the Rules is both anti-competitive and unnecessary. Rule 1108 provides telecommunications carriers, including

Qwest, all the flexibility they need for pricing their services. Therefore, the Price Cap Plan is not required for Qwest to offer competitive services in Arizona.

Timing is another area wherein Qwest is afforded special treatment under the Agreement. In ¶4(i) of Attachment A, the Agreement provides that any Qwest request to move a service from Basket 1 to Basket 3 will be processed within six months. This is not a time commitment found in the Rules and available to any carrier seeking competitive classification of a service. Only Qwest benefits from this private agreement which effectively amends the Rules, as applied to Qwest, without a formal rule-making proceeding.

The Competitive Telecommunications Services rules were adopted by the Commission after a thorough proceeding with full and active participation by consumers groups, new competitors and Qwest's predecessor, U S WEST. Nothing precludes a rate case settlement (even with a Price Cap Plan imbedded) that complies fully with the Rules. Indeed, the portions of the Agreement that conflict with or modify the Rules should be modified or removed entirely. The Commission is not authorized, in this proceeding, to amend the Rules. The Commission should not approve an Agreement which, by its terms, exempts Qwest from Rules generally applicable to all competitive services providers, including Qwest.

For purposes of this motion only, the undersigned parties are not arguing that the Agreement must be rejected completely, or that this proceeding should be unduly delayed or prolonged. However, the Commission should not be pushed into approving this privately negotiated Agreement prematurely. Instead, the Commission should: (1) allow adequate time for all interested parties to understand and flesh out how the Price Cap

Plan will impact emerging competition; (2) allow ample opportunity for public notice and comment; and (3) make all modifications necessary to ensure that the Agreement complies with the Rules.

3. THE REVENUE REQUIREMENT

In a single sentence on page 2 of the proposed Settlement Agreement, the Utilities Division Staff concludes that "For ratemaking purposes and in accordance with the terms of this Agreement, the Parties agree that Qwest's jurisdictional revenue requirement deficiency is $42.9 million." This revenue requirement is admittedly not the product of "issue-by-issue negotiations between Staff and Quest." Rather, it is based on "the litigation risk of presenting and arguing the many issues set forth in Staff's and other parties' prefiled testimony." See Supp. Testimony of Michael Brosch, p. 1-2. Simply put, this portion of the Agreement turns the entire rate case on its head[1]. Rather than a revenue requirement proceeding to determine the rates to which Qwest is entitled, this rate case has become a "price cap proceeding" which, in a footnote, resolves the Qwest rate case and, by private negotiation, establishes Qwest's revenue requirement. Such an approach does not adequately protect Arizona consumers. Qwest and Staff arrived at the revenue requirement figure by taking Qwest's alleged revenue requirement, reducing it by Commission-ordered adjustments in Qwest's prior rate case (that were proposed by Staff in this case) and taking 50% of the remaining adjustments proposed by Staff in its direct case. The other parties' adjustments are ignored. Needless to say, this approach

[1] On the issue of revenue requirement, Cox has not taken a position on the substantive issues. Rather Cox is concerned with deficiencies related to the process for determining the revenue requirement. AT&T has filed testimony addressing the Qwest revenue requirement and will not repeat those arguments here.

has no legal basis.

A number of parties, as well as present and past Commissioners, have argued that Qwest rates are producing revenues that exceed a fair rate of return. *See* Transcript of April 25, 2000 Open Meeting deliberations, pp. 52-53 (Depreciation Ruling). Any revenue requirement, whether the subject of adjudication or settlement, must be based on the record and should be arrived at only after full consideration of the views of *all* interested parties and the Commission.

As indicated by Staff's pre-filed testimony, much work has already been done with respect to calculating the revenue requirement. However, as noted, the general public and parties to this proceeding have been excluded from the negotiations that led to Staff's decision to adopt a revenue requirement of $42.9 million. This can and should be corrected through open hearings that are not limited in scope and in which the parties are permitted to adequately and fully address the merits of all the proposed adjustments to Qwest's revenue requirement.

The present expedited schedule to review the Agreement provides Qwest and Staff an unfair advantage. In essence, the burden has been placed on the other parties, in the limited time provided them, to disprove the benefits of the Agreement. An agreement negotiated in private by less than all the interested parties should be considered suspect and subject to extensive public scrutiny and debate. This is especially true in the case of an agreement that is unsupported by general ratemaking principles and is contrary to the Arizona regulations designed to implement competition in local telecommunications services.

RELIEF REQUESTED

The Procedural Order should be modified to require: (1) notice of the proposed Agreement to the general public and all interested or affected parties; (2) sufficient time for interested parties to thoroughly understand the Agreement and the impact the Price Cap Plan will have on telecommunications competition in Arizona (including whether this is the appropriate proceeding to adopt a Price Cap Plan); (3) a public proceeding that will allow the Commission and interested parties to provide input on the appropriate revenue requirement; and (4) modification of the Agreement, as needed, to comply with the Rules.

RESPECTFULLY SUBMITTED this 15th day of November, 2000.

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CERTIFICATE OF SERVICE

I hereby certify that the original and 10 copies of Joint Motion of AT&T and Cox to Reconsider Procedural Schedule were filed this 15th day of November, 2000, with:

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